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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

CHRISTINE JEAN MACARIO PRESTON

Case No.

Plaintiff,

WILLIAM P. BARR, Attorney General of the United States; UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES; CHAD F. WOLF, Acting Secretary of the Department of Homeland Security; KENNETH T. CUCCINELLI, Acting Director of the United States Citizenship and Immigration Services; ANNE ARRIES CORSANO, Director USCIS Seattle District (41); STEVEN B. CORLEY, Field Office Director of the USCIS Anchorage Field Office

**COMPLAINT FOR
DECLARATORY RELIEF
AND REVIEW OF AGENCY
ACTION UNDER THE
ADMINISTRATIVE
PROCEDURE ACT 5 U.S.C.
701 Et seq.**

Defendants

COMES NOW, Christine Preston and, via the undersigned counsel, requests relief from the Court as follows:

I. INTRODUCTION

1. Plaintiff Christine Jean Macario Preston (Ms. Preston) brings this action against the April 29, 2020 denial, by the United States Citizenship and

1 Immigration Services (USCIS), of her I-485 application to adjust status to that of a
2 Lawful Permanent Resident (LPR) under section 245(a) of the Immigration and
3 Nationality Act (“INA”). USCIS and others, (collectively the Agency) acting on its
4 behalf, denied Ms. Preston’s application by improperly finding she was inadmissible
5 as someone who has falsely claimed to be a citizen of the United States in order to
6 obtain any benefit under the law. *See* INA § 212(a)(6)(C)(ii).

7 2. The Agency based its decision upon three job applications that were
8 auto-populated with information found in Ms. Preston’s USAJOBS internet profile.
9 In the profile, Ms. Preston entered that she was not a citizen or national of the
10 United States and then right below, in the box for country of citizenship, she picked
11 the United States. The USAJOBS website has an obvious glitch as it allows an
12 individual to answer no to being a citizen or national of the United States, while
13 also permitting him or her to select the United States as country of citizenship. Ms.
14 Preston presented evidence of this obvious problem to the Agency; the Agency found
15 that the plain reading of the statute made this point irrelevant.

16 3. Ms. Preston also submitted evidence showing the prospective
17 employer, to whom the job applications were directed, was at all times aware that
18 Ms. Preston is not a citizen or national of the United States but rather is a citizen of
19 the Philippines, and that she was applying for work authorization with the agency.
20 Yet, instead of finding the obvious, namely that the USAJOBS computer
21 programming created an issue that the employer was aware of from the start, the

1 Agency decided there was some sort of conspiracy in which an Army employee was
2 knowingly receiving false employment applications from Ms. Preston.¹

3 4. The totality of the evidence in the record shows that Ms. Preston never
4 falsely represented to be a U.S. Citizen for any purpose or benefit under the INA or
5 Federal or State law because, at worst, it was an error of which her prospective
6 employer knew at all times.

7 5. Thus, Ms. Preston asks the Court to find that the Agency acted in an
8 arbitrary and capricious manner which violated the Administrative Procedure Act
9 (APA). At the same time, Ms. Preston requests that the Court order the Agency to
10 rescind the April 29, 2020 decision denying her application for adjustment of status,
11 reopen the adjustment proceedings, and adjudicate her application under INA §
12 245(a).

13 II. PARTIES

14 6. Plaintiff CHRISTINE JEAN MACARIO PRESTON, is a national and
15 citizen of the Philippines born on December 5, 1999. She was last admitted into the
16 United States with a K-1 visa and has not departed the country since that time.

17 7. Defendant WILLIAM P. BARR, Attorney General of the United States,
18 is sued in his official capacity. As United States Attorney General with ultimate
19 authority over the United States Department of Homeland Security (DHS), Mr.

20

21 1 “You included notes on the job application records indicating that the hiring agency knew that you
22 were submitting false information at the time applications were submitted. USCIS finds that this
23 claim does not absolve the fact that you clearly submitted applications on at least 3 occasions
claiming United States citizenship.”

1 Barr has the authority to approve, deny, reopen, or perform any other action
2 permitted by law or ordered by this Court regarding Ms. Preston's application.

3 8. Defendant UNITED STATES CITIZENSHIP AND IMMIGRATION
4 SERVICES (USCIS) is a sub-division with the Department of Homeland Security
5 (DHS), 6 U.S.C. § 271, and an "agency" within the meaning of the APA, 5 U.S.C. §
6 551(1). USCIS is responsible for actual adjudication of adjustment of status
7 applications and is the agency which adjudicated the application filed by Ms.
8 Preston.

9 9. Defendant CHAD F. WOLF, Acting Secretary of Homeland Security, is
10 sued in his official capacity. As Acting Secretary of Homeland Security, Mr. Wolf
11 oversees USCIS, a subagency of DHS, and has the authority to approve, deny,
12 reopen, or perform any other action permitted by law or ordered by this court
13 regarding Ms. Preston's application.

14 10. Defendant KENNETH T. CUCCINELLI, Acting Director, U.S.
15 Citizenship and Immigration Services, USCIS, is sued in his official capacity. As
16 Acting Director of U.S. Citizenship and Immigration Services (USCIS) Mr.
17 Cuccinelli oversees all USCIS District offices in the United States and has the
18 authority to approve, deny, reopen, or perform any other action permitted by law or
19 ordered by this court regarding the application filed by Ms. Preston.

20 11. Defendant ANNE ARRIES CORSANO, Director of the Seattle District
21 of United States Citizenship and Immigration Services, is sued in her official
22 capacity. As Director for District 41 of USCIS, she has jurisdiction over the USCIS
23 field office in Anchorage, Alaska and has the authority to approve, deny, reopen, or

perform any other action permitted by law or ordered by this Court regarding Ms. Preston's application.

12. Defendant STEVEN B. CORLEY, Director of the Anchorage Field Office of U.S. Citizenship and Immigration Services, is being sued in his official capacity. In his position as Anchorage Field Office Director, Mr. Corley has the authority to approve, deny, reopen, or perform any other action permitted by law or ordered by this Court regarding Ms. Preston's application.

III. JURISDICTION AND VENUE

A. Jurisdiction

13. Jurisdiction is proper under 28 U.S.C. § 1331. This action arises the Immigration and Naturalization Act, 8 U.S.C. §§ 1101 et seq., and its implementing regulations; the Administrative Procedure Act, 5 U.S.C. § 701 et seq., and 28 U.S.C. § 2201(a), because this is a civil action seeking, in addition to other remedies, a declaratory judgment.

14. Jurisdiction is not precluded pursuant to 8 U.S.C. §1252 as this action does not involve review of a discretionary action of the agency but arises from questions under the Constitution and law of the United States.

15. Jurisdiction is not precluded under “sovereign immunity.” Pursuant to 5 U.S.C. § 702 of the APA, the United States has explicitly waived sovereign immunity over the plaintiffs’ claims since the relief sought is other than money damages.

1 B. Venue

2 16. Venue in this judicial district is proper under 28 U.S.C. § 1391 because
3 this is a civil action in which the defendants are, respectively, an agency of the
4 United States and officer(s) of the United States acting in their official capacity, 28
5 U.S.C. § 1391(e), the events giving rise to this action took place within this District
6 in the geographical limits of the City of Anchorage, Alaska, 28 U.S.C. § 1391(b)(2),
7 and Plaintiff resides in Anchorage, Alaska, 28 U.S.C. § 1391(c)(1).

8 IV. STANDING

9 17. The APA affords a right of review to a person who is “adversely
10 affected or aggrieved by agency action.” 5 U.S.C. §702. The Agency’s improper
11 denial of Ms. Preston’s application for adjustment of status (I-485) has adversely
12 affected her ability to obtain legal residence in the United States. Ms. Preston thus
13 falls within the APA’s standing provisions.

14 V. FINALITY AND EXHAUSTION

15 A. Finality

16 18. The March 23, 2020 constitutes final agency action under the APA
17 because it is the denial of relief or its equivalent. U.S.C. §§ 551(13); 701(b)(2); 704.

18 B. Exhaustion

19 19. No exhaustion of administrative remedies is required since there is no
20 federal statute or regulation that mandates an appeal to the agency of the decision.
21 *Darby v. Cisneros*, 509 U.S. 137 (1993). Neither the INA nor implementing
22 regulations at 8 C.F.R. § 103.3(a) requires an administrative appeal of the denial.
23 Further, the only avenue for Ms. Preston is to file a motion to reopen or reconsider

1 with the Agency, and these motions are not requirements of administrative
2 exhaustion. 8 U.S.C. § 1252(d)(1); *Noriega-Lopez v. Ashcroft*, 335 F.3d 874, 881 (9th
3 Cir. 2003).

4 VI. STATUTE OF LIMITATIONS

5 20. This case is filed within the general six-year statute of limitations for
6 civil actions brought against the United States under 28 U.S.C. § 2401(a). The
7 Agency decision impugned is from April 29, 2020, well within the statutory period
8 to bring the present action.

9 VII. LEGAL BACKGROUND

10 A. Adjustment of Status

11 21. Adjustment of Status to lawful permanent resident (LPR) is the
12 procedure by which an individual in the United States is permitted to reside and
13 work lawfully in this country. INA § 245(a); 8 U.S.C. § 1255(a).

14 22. Adjustment of status takes place by the filing of an application (I-485)
15 with USCIS and, by a preponderance of the evidence, demonstrating that the
16 applicant is admissible as an LPR. INA § 245(a); INA § 291; 8 U.S.C. § 1361; *Matter*
17 *of E-M-*, 20 I&N Dec. 77 (BIA 1989).

18 23. Because adjustment of status is regarded as an admission, the
19 inadmissibility charges of the INA are operational and an applicant is impeded from
20 being admitted to lawful permanent residence if one such charge applies. *Matter of*
21 *Agour*, 26 I&N Dec. 566 (BIA 2015).

1 24. It is the burden of the applicant to prove that she is admissible, and
2 not affected by a mandatory ground for denial of relief, by a preponderance of the
3 evidence. 8 C.F.R. § 1240.8(d).

4 B. False Claim to U.S. Citizenship

5 25. The INA classifies as inadmissible any person who makes a false claim
6 of U.S. citizenship in order to obtain any benefit under federal or state law. INA §
7 212(a)(6)(C)(ii).

8 26. There is no waiver for inadmissibility resulting from a false claim to
9 U.S. citizenship such that it is known as “immigration death.” INA § 212(a)(6)(C)(ii).

10 27. To trigger inadmissibility, the claim must fall within the four corners
11 of the statute. It must be made for a purpose or benefit under state or federal law, it
12 must be false, and it must be for U.S. Citizenship. If the alleged claim does not meet
13 one or more of these requirements, it does not support inadmissibility under INA §
14 212(a)(6)(C)(ii).²

15 28. The BIA has recognized the virtue of applying the principle of timely
16 retraction when an individual “voluntarily and prior to any exposure of the
17 attempted fraud corrected his testimony that he was an alien lawfully residing in
18 the United States.” *Matter of M-*, 9 I&N Dec. 118, 119 (BIA 1960); *see also Matter of*
19 *R-R-*, 3 I&N Dec. 823, 827 (BIA 1949). The timely retraction doctrine applies to a
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² The BIA has interpreted INA § 212(a)(6)(C)(ii) not to require an element of intent, i.e., it need not
22 be made ‘knowingly.’ *Matter of Zhang*, 27 I&N Dec. 569 (BIA 2019). This interpretation is premised
23 upon an incorrect construction which does not deserve deference under *Chevron U.S.A., Inc. v.*
Natural Resources Defense Council, Inc., 468 U.S. 837 (1984).

false claim to U.S. citizenship and stops said claim from rendering an alien inadmissible or deportable. *Valadez-Munoz v. Holder*, 623 F.3d 1304 (9th Cir. 2010); *Martinez v. Lynch*, 606 Fed. Appx. 344 (9th Cir. 2015).

VIII. FACTUAL ALLEGATIONS

29. Ms. Preston, a citizen of the Philippines, came to the United States with a K-1 non-immigrant visa classification to marry her now-husband, Edward Preston, a U.S. citizen.

30. At all times since her entry to the United States, Ms. Preston has resided with her husband near Fort Greely, Alaska, where he is a civilian employed by the United States Army.

31. On December 31, 2018, Ms. Preston filed with USCIS the forms required for adjustment of status based upon her marriage to Mr. Preston.

32. Sometime before January 24, 2019, Ms. Preston completed an USAJOBS profile on the USAJOBS website.

33. The USAJOBS website profile allows an applicant to state that she is not a citizen or national of the United States yet still permits that same individual to choose the United States as country of citizenship.³

34. The USAJOBS site auto-populates job applications only using the “country of citizenship” information in the applicant’s profile. The resulting application(s) will automatically show the country of citizenship to be the United

³ Why the USAJOBS software would allow for this is beyond understanding. The inclusion of the United States as a choice for “country of citizenship,” after an individual clearly denotes he is not a Citizen or National of the United States, is absurd and may only be described as a programming error.

1 States. This happens even when the applicant answers ‘no’ to the question of
2 whether she is a citizen or national of the United States in the USAJOBS profile.

3 35. In filing out her USAJOBS profile, Ms. Preston indicated she was
4 neither a citizen nor a national of the United States, but it would appear that on the
5 following line she did not indicate the Philippines as her country of citizenship and
6 chose United States from the list of countries available.

7 36. On January 24, 2019, February 5, 2019, and October 28, 2019, Ms.
8 Preston applied to various positions via the USAJOBS portal. The positions were all
9 at Fort Greely and were designated as open to the public on the USAJOBS site.

10 37. The USAJOBS site defines a job as “open to the public” when U.S.
11 citizens and others, such as U.S. nationals and “persons who owe permanent
12 allegiance to the United States,” may also apply for the position.

13 38. Ms. Preston’s applications were auto-populated from her USAJOBS
14 profile with Ms. Preston’s country of citizenship as ‘United States.’ Because of this,
15 she and her husband took the job applications to the prospective employer, Ms.
16 Jessica L. Smith, Director, U.S. Army Family and Morale, Welfare, Recreation at
17 Fort Greely, Alaska.

18 39. At all times, Ms. Smith was aware Ms. Preston was a citizen of the
19 Philippines, not the United States, and that she was in the process of obtaining her
20 work permit from USCIS. On February 5, 2019, Ms. Smith, knowing Ms. Preston
21 would need work authorization to be employed, provided Ms. Preston with a letter
22 requesting that the Agency expedite the issuance of Ms. Preston’s work permit.

1 40. On February 27, 2019, Ms. Preston appeared for an appointment at the
2 USCIS Anchorage Field Office to have her biometrics taken for her pending I-485
3 and other applications. After that appointment Ms. Preston and her husband
4 presented the request to expedite her work permit at the reception window at the
5 Anchorage Field Office.

6 41. At the window, Ms. Preston and her husband were mostly questioned
7 as to how and why she obtained a job offer from the U.S. Army if she was not a U.S.
8 citizen. Contrary to what the Agency decision states, at no time did Ms. Preston or
9 her husband represent that she was a U.S. Citizen or that she had obtained the
10 employment offer by claiming to be one. Furthermore, it is unclear how the
11 February 27, 2019 window inquiry became part of the record in this case. The
12 Agency did not place the Prestons under oath prior to questioning them on
13 February 27, 2019 at the window counter.

14 42. On October 29, 2019, the Agency conducted Ms. Preston's adjustment
15 of status interview. At the time, Ms. Preston was six months pregnant, which was
16 clear from her appearance. Ms. Preston felt badgered, interrogated, and subjected to
17 significant abuse by the USCIS officer conducting the interview.

18 43. The interviewing officer seemed more intent on having Ms. Preston
19 state that she had worked in the U.S. without authorization or that she had falsely
20 claimed to be a U.S. citizen than eliciting any information to the contrary.

21 44. The interrogation of the six-months pregnant Ms. Preston took
22 approximately three hours, from 11 A.M. to 2 P.M. The Agency recorded the
23 interview. At one point during the interview, Ms. Preston had to excuse herself to go

1 to the restroom to vomit. Upon her return to the interview, the officer, clearly
2 undeterred her by state, continued the questioning. The video of the interview is,
3 and must be, within the record of proceedings.

4 45. The Agency did not give a decision on the adjustment of status
5 application the day of the interview. Ms. Preston and her husband returned from
6 Anchorage to Fort Greely.

7 46. On October 21, 2019, the Agency sent Ms. Preston a “Request for
8 Further Evidence” (RFE). The RFE asked for a series of documents which Ms.
9 Preston produced on a timely basis. These documents included the USAJOBS
10 applications as well as documents showing Ms. Preston answered that she was not
11 a U.S. citizen in the USAJOBS profile.

12 47. On March 19, 2020, Ms. Preston received a Notice of Intent to Deny
13 (NOID). In her response, she provided a letter from Ms. Smith dated April 17,
14 2020. The letter declared that the citizenship statement in the job applications was
15 a software error of which Ms. Smith was aware, that she instructed Ms. Preston to
16 proceed with the job applications notwithstanding said error, and that at no time
17 did she consider Ms. Preston to be providing false information regarding her
18 citizenship in order to obtain employment.⁴

19 48. On April 29, 2020, the Agency denied Ms. Preston’s application to
20 adjust status, finding that she was inadmissible under INA § 212(a)(6)(C)(ii) and
21

22 ⁴ The Agency’s position seems to be that Ms. Smith, knowing Ms. Preston was not a U.S. citizen,
23 knowingly allowed her to present job applications containing “false information” in order to obtain
employment.

1 that she would be placed in removal proceedings if she did not leave the United
2 States immediately.

3 49. In its decision, the Agency stated that Ms. Preston falsely claimed to
4 be a U.S. citizen in order to secure employment. The Agency went on to state that
5 Ms. Preston had presented evidence “indicating that the hiring agency new [sic]
6 that you were submitting false information at the time these applications were
7 submitted. USCIS finds that this claim does not absolve you of the fact that you
8 clearly submitted applications on at least three occasions claiming United States
9 citizenship.” *See* Agency Decision at Exhibit A.

10 IX. CAUSE OF ACTION – VIOLATION OF THE APA

11 50. Ms. Preston repeats, realleges, and incorporates the foregoing
12 paragraphs as if fully set forth herein.

13 51. Ms. Preston has been aggrieved by an agency action covered by the
14 Administrative Procedure Act, 5 U.S.C. §§ 701 et seq., in that she was unlawfully
15 denied adjustment of status to that of a permanent resident of the United States.

16 52. A decision is “arbitrary and capricious if the agency has entirely failed
17 to consider an important aspect of the problem, offered an explanation for its
18 decision that runs counter to the evidence before the agency, or is so implausible
19 that it could not be ascribed to a difference in view or the product of agency
20 expertise.” *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*,
21 463 U.S. 29, 43 (1983).

22 53. In its decision, the Agency misconstrued the language of INA §
23 212(a)(6)(C)(ii) by finding that a clerical error, made with no intent to deceive,

1 triggers a false claim to U.S. citizenship. The proper construction of INA §
2 212(a)(6)(C)(ii) requires the claim to be “false.” Holding out that any claim,
3 including one made in error, triggers INA § 212(a)(6)(C)(ii) inadmissibility renders
4 superfluous the word *false* within the statute and presents significant
5 contradictions with other parts of the INA. The Agency’s decision, based upon this
6 erroneous interpretation, is not in accordance with the law.

7 54. The decision denying Ms. Preston’s application shows that the Agency
8 ignored evidence within the record, did not have a rational explanation for the
9 weight given to the evidence it did use, and chose to patently mischaracterize other
10 evidence, in full contradiction of the law and its own regulations. In this, the Agency
11 not only failed to follow its own regulations, but reached an implausible conclusion
12 contrary to the evidence in the record.

13 55. The Agency failed to consider the doctrine of timely retraction as
14 applied to Ms. Preston. The evidence in the record shows that, even if it were
15 assumed Ms. Preston made a false claim under INA § 212(a)(6)(C)(ii), the doctrine
16 of timely retraction would cure all of its deleterious effects, that is, unless the
17 absurd theory set forth in the Agency’s decision, involving an alleged conspiracy by
18 Ms. Preston, her husband, and possibly Ms. Smith at Fort Greely, is given credence.

19 X. RELIEF REQUESTED

20 WHEREFORE Plaintiff requests the following relief:

21 A. Declare Agency’s denial of Ms. Preston’s application to be unlawful and
22 in violation of the Administrative Procedure Act;

1 B. Order the Agency to immediately take any action by which Ms.
2 Preston's application for adjustment of status may be adjudicated;
3 C. Grant attorneys' fees and costs pursuant 28 U.S.C. §2412, 28 U.S.C.
4 §1920, Fed. R. Civ. P. 54(d) and other authority; and
5 D. Grant any other relief the Court deems appropriate and just.

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7 RESPECTFULLY SUBMITTED on June 25, 2020.

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